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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jamal Atalla,	)	CV09-1610-PHX-NVW
	)	
Petitioner,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW, and</b>
vs.	)	<b>ORDER</b>
	)	
John Kramer, District Director of United	)	
States Citizenship and Immigration	)	
Services, and United States Citizenship	)	
and Immigration Services,	)	
	)	
Respondents.	)	

Petitioner is before the Court seeking *de novo* review, pursuant to 8 U.S.C. § 1421(c), of the April 9, 2009 decision of United States Customs and Immigration Services (“USCIS”) denying his application for naturalization. The Court conducted an evidentiary hearing on Petitioner’s application on April 5, 6, 7, and 8, 2011. This order states the Court’s findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

**I. Findings of Fact**

**A. Biographical Information**

Petitioner Jamal Atalla, M.D. (“Dr. Atalla”) is a native of Syria, born of Palestinian parents, who currently lives in Phoenix, Arizona. Dr. Atalla is a licensed healthcare provider specializing in interventional nephrology.

In 1991, Dr. Atalla graduated from the Damascus University School of Medicine in Damascus, Syria. In 1992, he entered the United States as a student to continue his

1 medical education. Subsequently, Dr. Atalla completed an internship in internal medicine  
2 at the University of New York, Buffalo, New York, and a medical residency at the  
3 University of Kentucky at Lexington. Then he worked as a physician providing care to  
4 underserved populations in Martin, Kentucky, completed a nephrology and hypertension  
5 fellowship at the University of Missouri, worked as a nephrologist for Indiana  
6 Nephrology in Richmond, Indiana, completed an interventional nephrology fellowship  
7 with the Arizona Kidney Disease & Hypertension Center (“AKDHC”) in Phoenix,  
8 Arizona, and has been continuously employed by AKDHC as an interventional  
9 nephrologist for the past five years. He is board certified in internal medicine and  
10 nephrology. Also, he has been certified by the American Society of Diagnostic and  
11 Interventional Nephrology since 2007. Dr. Atalla is a member of numerous professional  
12 organizations, including the American Society of Nephrology, the National Kidney  
13 Foundation, and the Syrian American Medical Society.

14 Dr. Atalla moved to the United States with his wife, Nadia Katrangi, who had also  
15 obtained a medical doctorate and a degree in clinical pathology from a university in Syria  
16 and would later earn a master’s degree in biochemistry and molecular biology from  
17 Wright State University in Ohio. Dr. Atalla and his wife became permanent residents of  
18 the United States in 1997. In May 2002, they filed applications to become naturalized  
19 citizens of the United States, and Dr. Atalla’s wife became a naturalized citizen when her  
20 application was approved.

21 Dr. Atalla and his wife are the parents of four children, all of whom were born in  
22 the United States and are United States citizens. Their oldest son is named Yousef and  
23 named after Dr. Atalla’s father. Dr. Atalla is sometimes referred to as Abu Yousef  
24 (meaning “father of Yousef”), which is a common Muslim custom. Dr. Atalla’s parents  
25 currently reside in Damascus, Syria, and he has sent money to them from the United  
26 States. Dr. Atalla traveled to Syria in 1997, 2000, 2003, 2004, 2005, and 2006 and to  
27 Saudi Arabia in 1998.

1 Dr. Atalla is a practicing Muslim, an active member of his mosque, and active in  
2 the Islamic community in Phoenix, Arizona. He and his family routinely volunteer at  
3 soup kitchens and visit the elderly in nursing homes. Dr. Atalla has, on a regular basis,  
4 volunteered as a physician at the medical clinic located at the Cultural Food Bank in  
5 Phoenix, Arizona. He also provides nephrology services at free clinics in various parts of  
6 Arizona and treats indigent patients at Maricopa County Medical Center.

7 In addition, Dr. Atalla serves on the Board of Directors for the Muslim Youth  
8 Center for Arizona, which provides educational and sports activities for youth.<sup>1</sup> He also  
9 serves on the Board for the Arizona Cultural Academy, which is a private Islamic school  
10 that teaches academics to pre-kindergarten through twelfth grade students and in which  
11 his children are enrolled. Further, Dr. Atalla has coordinated efforts to educate youth  
12 about smoking, alcohol, and drug abuse and has volunteered with the Muslim American  
13 Society, an American organization to promote Islamic understanding among youth, by  
14 mentoring and working in shelters and soup kitchens.

15 Over the years, Dr. Atalla and his wife have donated money to approximately sixty  
16 different charitable organizations. Charitable giving, known as *zakat*, is one of the core  
17 principles of Islam and includes donating time and skills, in addition to money, to help the  
18 less fortunate. Dr. Atalla has practiced *zakat* as part of his faith for many years. He has  
19 often donated to a charitable organization because of a solicitation he has heard at a faith  
20 center.

21 **B. Dr. Atalla's Involvement with the Global Relief Foundation and Other**  
22 **Organizations**

23 Beginning in 1997, Dr. Atalla regularly made small donations and occasionally  
24 made larger donations to the Global Relief Foundation, which had its headquarters in

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26 <sup>1</sup>The deposition transcript of Sabahudin Ceman, Director of the Muslim Youth  
27 Center for Arizona, was admitted as exhibit 232, subject to the objections stated therein.  
28 The objections are considered and overruled.

1 Chicago, Illinois, and provided charitable relief to refugees. He estimates that he donated  
2 a total of approximately \$25,000 to \$30,000 to the Global Relief Foundation. He was not  
3 a member or employee of the Global Relief Foundation and does not believe that his  
4 donations to or involvement with the Global Relief Foundation constituted being  
5 “associated” with it.

6 Over time, Dr. Atalla became friends with Mohamad Chehade, Ph.D., then-  
7 executive director of the Global Relief Foundation. He met with Dr. Chehade several  
8 times in Chicago and communicated with Dr. Chehade by telephone every couple of  
9 months over the years. Dr. Chehade had considered asking Dr. Atalla to serve on Global  
10 Relief Foundation’s board, but did not.

11 In 2000, Dr. Atalla helped raise funds and collect medicine and medical equipment  
12 to establish a medical clinic in Baku, Azerbaijan, to be operated by the Global Relief  
13 Foundation. He spent approximately three weeks in Baku helping to establish the clinic.  
14 He was not paid for any of his efforts related to the Global Relief Foundation.

15 In January 2000, Dr. Atalla contacted Dr. Chehade to volunteer his services as a  
16 doctor to provide relief to refugees in the area of Chechnya. In February 2000, Dr. Atalla  
17 called Dr. Chehade to discuss whether another person with an American passport, who  
18 would bring medicine and possibly a portable x-ray machine, should go to Baku,  
19 Azerbaijan, or to Georgia. Dr. Atalla indicated that he hoped to go to Baku later and said  
20 they would travel at their own expense. He also asked Dr. Chehade about obtaining a  
21 charitable discount for medicines they would bring and about obtaining donated medicine  
22 for refugees in Baku.

23 In March 2000, Dr. Atalla called Dr. Chehade and further discussed providing  
24 medical services in Baku. Dr. Chehade told Dr. Atalla that the Azerbaijan hospitals only  
25 permit doctors under contract to provide medical services in the hospitals, but outpatient  
26 services could be provided in a medical clinic. Dr. Chehade said that most of the  
27 wounded were moved from Georgia to Azerbaijan, and the Global Relief Foundation did  
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1 not have a clinic in Azerbaijan, but could establish one. Dr. Atalla said he intended to  
2 establish a small clinic for the poor and underprivileged in Azerbaijan and to reside there,  
3 but he wanted Dr. Chehade to keep his intentions confidential. Dr. Atalla also told Dr.  
4 Chehade that he was collecting funds in the name of the Islamic center that were to be  
5 transferred through Global Relief Foundation and entirely used for relief work, *i.e.*, the  
6 donors did not want any administrative fees to be deducted from the donation. Dr.  
7 Chehade agreed to Dr. Atalla's terms.

8 In April 2000, Dr. Atalla attended a meeting in Chicago for an organization called  
9 Doctors for Global Relief. The Global Relief Foundation sent a representative to that  
10 meeting.

11 On May 15, 2000, Dr. Atalla went to Baku, Azerbaijan, and he returned to the  
12 United States on June 3, 2000. While there, he interviewed doctors, a dentist, a  
13 pharmacist, and other staff being considered for positions at the medical clinic that was to  
14 be funded by the Global Relief Foundation and operated by a local foundation. He  
15 recorded the interviews, took photographs, and wrote a report, which he gave to Dr.  
16 Chehade. Dr. Atalla did not participate in any hiring decisions.

17 Although Dr. Atalla had considered returning to the Baku clinic on a regular basis,  
18 soliciting other doctors to volunteer their services there, and collecting more medicine for  
19 the clinic, that plan did not happen. At one point, in fact, he resigned from his full-time  
20 medical position and continued an additional part-time job so that he could devote more  
21 of his time to volunteer relief work. However, after a brief leave of absence, he returned  
22 to his full-time medical position. After Dr. Atalla's trip to Baku, he provided only two  
23 programs, *i.e.*, presentations, at mosques to raise funds for the Global Relief Foundation's  
24 medical work.

25 In June 2000, Dr. Atalla went to Tampa, Florida, to raise funds for the Global  
26 Relief Foundation. The Global Relief Foundation paid Dr. Atalla's airfare and hotel  
27 expense. After presenting his fundraising program to the congregation at a local mosque,  
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1 Dr. Atalla met with a group of doctors to solicit donations of funds and medical  
2 equipment for the Baku clinic.

3 In July 2000, Dr. Atalla questioned Dr. Chehade about accusations that the Global  
4 Relief Foundation had lost one million dollars. Dr. Atalla thought perhaps the money had  
5 disappeared because of mismanagement before Dr. Chehade became in charge, but Dr.  
6 Chehade assured Dr. Atalla that never in its history had the foundation lost a million  
7 dollars. Dr. Chehade told Dr. Atalla that since the foundation was established, not one  
8 dollar had been lost. He further explained that at one point in the past, the Global Relief  
9 Foundation had been in debt for \$100,000, but the money was not lost. He said it was not  
10 a matter of integrity, but rather a matter of bad management. Also, Dr. Atalla urged Dr.  
11 Chehade not to procrastinate regarding obtaining an ambulance for the Baku medical  
12 clinic.

13 In May 2001, Dr. Atalla attended a Global Relief Foundation conference in  
14 Chicago as a guest of the organization. Employees, representatives, officers, directors,  
15 and some volunteers met to discuss the future of the Global Relief Foundation.

16 In November 2001, after the events of September 11, Dr. Atalla was aware that  
17 people were apprehensive about donating to charitable relief organizations like the Global  
18 Relief Foundation, and he had heard that the government may begin freezing the assets of  
19 some organizations. Dr. Chehade assured Dr. Atalla that the Global Relief Foundation  
20 was working with the American embassy in Islamabad, the World Food Program, and the  
21 United Nations refugee agency, and that its programs were legal.

22 On December 14, 2001, the FBI searched the headquarters of the Global Relief  
23 Foundation and Dr. Chehade's home. Also on December 14, 2001, the Department of  
24 Treasury froze the Global Relief Foundation's assets.

25 In December 2001, Dr. Atalla became aware of accusations that the Global Relief  
26 Foundation had ties to terrorism. Dr. Atalla did not believe that Dr. Chehade and the  
27 Global Relief Foundation were involved in terrorism. In April and July 2002, Dr. Atalla  
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1 made two donations to GRF's legal defense fund. Dr. Atalla did not make any financial  
2 contributions to the Global Relief Foundation after July 2002.

3 On October 18, 2002, the United States designated the Global Relief Foundation as  
4 a terrorist organization. On October 22, 2002, the Global Relief Foundation's assets were  
5 frozen according to United Nations Security Council Resolutions 1267 and 1390. As  
6 early as 2000, the FBI had concluded that, although a majority of Global Relief  
7 Foundation funding went toward legitimate relief operations, a significant percentage was  
8 diverted to fund extremist causes. FBI agents believed the Global Relief Foundation had  
9 links to the Al Qaeda organization of Usama Bin Laden, but was not part of the formal al  
10 Qaeda network.

11 In March 2003, at Dr. Atalla's invitation, Dr. Chehade came to Missouri and  
12 presented a time management seminar at the Islamic Center. While there, Dr. Chehade  
13 and his family stayed at Dr. Atalla's home.

14 On July 6, 2004, Special Agent Andrew R. Ryder of the FBI and Assistant United  
15 States Attorney Anthony Gonzalez interviewed Dr. Atalla in Columbia, Missouri, in the  
16 presence of his attorney. In that unrecorded interview, Dr. Atalla stated that he had made  
17 contributions to the Global Relief Foundation, the Holy Land Foundation, the  
18 Benevolence International Foundation, and the Islamic African Relief Agency.

19 In addition to his donations to the Global Relief Foundation, Dr. Atalla made  
20 donations to the Holy Land Foundation, Benevolence International Foundation, and the  
21 Islamic African Relief Agency at times when they were recognized by the United States  
22 as 501(c)(3) organizations. Dr. Atalla was not a member of the Holy Land Foundation,  
23 Benevolence International Foundation, or the Islamic African Relief Agency. He does  
24 not believe that his donations to or involvement with any of these organizations  
25 constituted being "associated" with them.

**C. Dr. Atalla's Application for Naturalization**

On May 12, 1997, Dr. Atalla became a lawful permanent resident of the United States. On May 5, 2002, Dr. Atalla filed an Application for Naturalization, INS Form N-400, with U.S. Citizenship and Immigration Services ("USCIS"). Dr. Atalla wrote in black ink on his application. Among other things, he indicated that he had traveled to Syria in 1997 and 2000, Saudia Arabia in 1998, and Azerbaijan in 2000.

The Form N-400 included the following question 8(a): "Have you EVER been a member of or associated with any organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place?" In response, Dr. Atalla marked an "X" in the box for "Yes." Question 8(b) stated: "If you answered 'Yes,' list the name of each group below. If you need more space, attach the names of the other group(s) on a separate sheet of paper." In response, Dr. Atalla wrote: "American College of Physicians."<sup>2</sup> Question 9(c) stated: "Have you EVER been a member of or in any way associated (*either directly or indirectly*) with: . . . A terrorist organization?" In response, Dr. Atalla marked an "X" in the box for "No." Question 16 stated: "Have you EVER been arrested, cited, or detained by any law enforcement officer (including INS and military officers) for any reason?" In response, Dr. Atalla marked an "X" in the box for "No."<sup>3</sup> Question 23 stated: "Have you EVER given false or misleading information to any U.S. government official while applying for any immigration benefit or to prevent deportation, exclusion, or removal?" In response, Dr. Atalla marked an "X" in the box for "No."

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<sup>2</sup>Later, during a naturalization interview, the interviewer wrote the names of ten additional organizations in the space for responding to question 8(b).

<sup>3</sup>During a naturalization interview, Dr. Atalla provided updated information regarding traffic violations in 2005, 2007, and 2008, and changed his response to question 16 to "Yes."



1 USCIS interviewed Dr. Atalla regarding his application for naturalization on May  
2 27, 2004, July 17, 2006, and June 12, 2008. During the interviews, USCIS officers wrote  
3 in red ink on Dr. Atalla's Form N-400 application, adding information, circling some of  
4 the question numbers and Dr. Atalla's responses, and placing check marks by some of the  
5 responses. Many of the responses are circled and have two check marks, which indicates  
6 that all three interviewers asked Dr. Atalla to confirm his response to the related question,  
7 but does not indicate whether each or any of the interviewers read the entire question  
8 exactly as printed on the form. On Dr. Atalla's Form N-400 application, his response  
9 ("Yes") to question 8(a) is circled and does not have any checkmarks. There are no  
10 checkmarks next to his response to question 8(b) or the information added by the  
11 interviewer(s) to his response. Question 9(c) is circled, and Dr. Atalla's response ("No")  
12 is circled with two checkmarks. Question 16 is circled, Dr. Atalla's initial response  
13 ("No") is changed to "Yes," followed by two checkmarks. In question 16, the word  
14 "cited" is circled, and information about three traffic violations in 2005, 2007, and 2008  
15 has been added in red ink. Question 23 is circled, and Dr. Atalla's response ("No") is  
16 circled with two checkmarks.

17 On September 10, 2008, USCIS denied Dr. Atalla's application for naturalization  
18 based on a finding of lack of good moral character. On October 9, 2008, Dr. Atalla  
19 administratively appealed his naturalization denial by filing a Request for Hearing, INS  
20 Form N-336.

21 On April 7, 2009, USCIS affirmed the denial of Dr. Atalla's application for  
22 naturalization due to failure to establish good moral character. The N-336 Hearing  
23 Decision stated that Dr. Atalla had provided false information to obtain an immigration  
24 benefit on his application for naturalization and during his naturalization interviews by  
25 failing to disclose he had been interviewed by Customs and Border Protection officers  
26 upon his return from overseas travel on August 23, 2004, July 5, 2005, and July 6, 2006,  
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1 and by the FBI on July 6, 2004.<sup>4</sup> The N-336 Hearing Decision also states that Dr. Atalla  
2 “failed to disclose [his] association with numerous organizations with ties to terrorism”  
3 and that “[o]ne who contributes funds to an organization does have an association with  
4 that organization.” The reviewing officer concluded that Dr. Atalla added to his  
5 application the names of organizations with no terrorist ties as “a deliberate attempt to  
6 conceal [his] affiliation with the other terrorist organizations” to which he had donated.

7 On August 4, 2009, Dr. Atalla filed the present action seeking a hearing *de novo*  
8 on his application for naturalization pursuant to 8 U.S.C. § 1421(c).

9 **D. Dr. Atalla’s Sworn Oral Statements<sup>5</sup>**

10 **1. May 27, 2004**

11 On May 27, 2004, USCIS Officer Kirk R. Wills interviewed Dr. Atalla in Kansas  
12 City, Missouri, regarding Dr. Atalla’s application for naturalization. The interview was  
13 recorded by electronic sound recording and later transcribed. Officer Wills placed Dr.  
14 Atalla under oath at the beginning of the naturalization interview. He did not ask Dr.  
15 Atalla whether everything in his application was true and complete to the best of his  
16 knowledge, but he did ask questions regarding many of Dr. Atalla’s responses in the  
17 application.

18 Officer Wills asked Dr. Atalla about his trips out of the country and added to the  
19 application information regarding trips that Dr. Atalla had made since he had completed  
20 the application in May 2002. He asked Dr. Atalla about the purpose of his trips to Syria,  
21 Saudi Arabia, and Azerbaijan. He asked some, but not all, of the questions in the  
22 application and did not ask all of them exactly as written. For example, Officer Wills  
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24 <sup>4</sup>Neither the application nor the transcript interviews, however, indicate that Dr.  
25 Atalla was asked whether he had been “interviewed.”

26 <sup>5</sup>Dr. Atalla’s pretrial deposition was not offered or admitted in evidence during the  
27 evidentiary hearing although USCIS subsequently attached it as an exhibit to the  
28 Supplemental Brief of Respondents.

1 asked, "Have you ever claimed to be a United States citizen?" although the application  
2 stated, "Have you EVER claimed to be a United States citizen (*in writing or any other*  
3 *way*)?" Similarly, Officer Wills asked, "Have you ever voted in a United States  
4 election?" although the application stated, "Have you EVER voted in any Federal, state,  
5 or local election in the United States?" Also, Officer Wills asked, "Have you ever been  
6 arrested by the police for any reason?" although question 16 on the application stated,  
7 "Have you EVER been arrested, cited, or detained by any law enforcement officer  
8 (including INS and military officers) for any reason?"

9       Officer Wills did not read to Dr. Atalla question 8(a), which stated, "Have you  
10 EVER been a member of or associated with any organization, association, fund,  
11 foundation, party, club, society, or similar group in the United States or in any other  
12 place?" Instead, he asked, "Are you a member of any clubs, organizations, or social  
13 groups?" Dr. Atalla responded with the names of some medical organizations and said he  
14 did not know whether the interviewer wanted to hear all of the medical organizations of  
15 which he was a member. Instead of asking for the names of all of the organizations of  
16 which Dr. Atalla was a member or asking Dr. Atalla whether he was associated with any  
17 other organizations, the interviewer just moved on to his next question.

18       Officer Wills also did not read to Dr. Atalla question 9, which stated:

19       Have you EVER been a member of or in any way associated with (*either*  
20       *directly or indirectly*) with:

- 21           a.     The Communist Party?
- 22           b.     Any other totalitarian party?
- 23           c.     A terrorist organization?

24       Instead, Officer Wills asked, "Have you ever been a member of the Communist Party?";  
25       "Have you ever been a member or in any way associated with any totalitarian political  
26       party?"; and "Have you ever been a member or in any way associated with any terrorist  
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1 organization?" After receiving negative responses to all three questions, Officer Wills  
2 asked Dr. Atalla about his involvement with the Global Relief Foundation:

3 Q. Okay. Now, are you aware that there's certain charities that  
4 have been designated as terrorist organizations?

5 A. Correct.

6 Q. Okay. Have – what do you know about an organization called  
7 the – I believe it's called the Global Relief Foundation –

8 A. Um-hmm.

9 Q. – out of Chicago, Illinois?

10 A. Global Relief Foundation is an organization that – it occurred  
11 that they came and raised funding in communities that I was involved.

12 Q. Okay.

13 A. I – knew – I knew the chairperson of that organization –

14 Q. Okay.

15 A. – just from him coming and visiting us. And he got me, you  
16 know – I mean, he became just a –

17 Q. Okay.

18 A. – distant friend and –

19 Q. Okay. Do – what did – what did you do? Did you ever  
20 donate money to them or –

21 A. I did.

22 Q. Okay. You've never actually been a member. Is that right?  
23 You just donated money to them?

24 A. Donated money, yeah.

25 Q. Okay. Have you ever raised money for them?

26 A. At a local level. Like, when they come in and I help out and  
27 volunteer.

28 Q. Okay. Do you mind if I take a statement from you in regards  
to your involvement with them?

A. No.

1 Q. Okay. Now, before we – before I do that, I would like to  
2 finish the questions –

3 A. Sure.

4 Q. – here on your application and then I'll take the statement at  
5 the end. Okay?

6 Have you ever participated in the persecution of any  
7 individual because of their race, ethnic group, religion, or political opinion?

8 A. Never.

9 Q. Okay. Have you ever been arrested by the police for any  
10 reason?

11 A. Never.

12 . . . .

13 Q. Okay. Have you ever given false or misleading information  
14 to an immigration officer or any other U.S. government official, to obtain a  
15 visa?

16 A. Never.

17 Q. Have you ever lied on [*sic.*] an immigration officer or any  
18 other U.S. government official for any reason whatsoever?

19 A. Never.

20 Then Officer Wills said that he would like to take a statement from Dr. Atalla at  
21 the end of the interview regarding his involvement with the Global Relief Foundation.  
22 After asking Dr. Atalla additional questions, Officer Wills prepared a statement of  
23 questions and answers for Dr. Atalla to review before signing. One of the questions  
24 Officer Wills asked about the Global Relief Foundation was, "Have you ever been a  
25 member, donated money to, or raised funds for this organization?" Dr. Atalla responded  
26 that he had donated money and raised funds for the Global Relief Foundation, but he had  
27 never been a member. He said that the trip he took to Azerbaijan to help set up a medical  
28 clinic was for the Global Relief Foundation. He also said that the funds he helped raise  
were for purchasing medical supplies and for the Global Relief Foundation's medical  
program in which he participated. Dr. Atalla told Officer Wills that he kept in contact

1 with the Global Relief Foundation's chairperson, Mohamad Chehade, and called him as a  
2 friend every couple of months or so.

3       Officer Wills asked Dr. Atalla when he first became "aware of the accusations  
4 about the Global Relief Foundation's connections to terrorism." Dr. Atalla responded  
5 that he learned about it from the media post-September 11. Dr. Atalla also said that he  
6 did not continue to donate money or participate in fundraising activities for the Global  
7 Relief Foundation after he became aware of the accusations. However, the next day, on  
8 May 28, 2004, Dr. Atalla sent a letter to Officer Wills amending his sworn statement. He  
9 said that he had reviewed his records and found that he had written two checks in 2002  
10 for the Global Relief Foundation's legal defense fund, which he believed to be  
11 government authorized according to the mass mail he had received from the Global Relief  
12 Foundation asking for help at that time.

13       In summary, Officer Wills did not ask Dr. Atalla whether he had ever been  
14 "associated with" any organization or group, only whether he had been a "member" of  
15 any organization or group. Officer Wills asked Dr. Atalla whether he had "ever been a  
16 member or in any way associated with any terrorist organization," but he did not say  
17 "directly or indirectly." Officer Wills indicated that he knew Dr. Atalla had been  
18 involved with the Global Relief Foundation, and Dr. Atalla answered Officer Wills'  
19 questions about the Global Relief Foundation and its designation as a terrorist  
20 organization. Officer Wills asked Dr. Atalla, "Have you ever been *arrested* by the police  
21 for any reason?" but did not ask whether he had ever been *cited* or *detained* by any law  
22 enforcement officer. He did not ask Dr. Atalla whether he had ever been *interviewed* by  
23 any law enforcement officer. Officer Wills asked Dr. Atalla, "Have you ever given false  
24 or misleading information to an immigration officer or any other U.S. government  
25 official, to obtain a visa?" but did not ask whether he had given false or misleading  
26 information "while applying for any immigration benefit." Officer Wills asked Dr. Atalla  
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1 whether he had “lied” to a U.S. government official, but did not ask whether he had ever  
2 “misled” a U.S. government official.

3 With the exception of whether he had continue to donate money or participate in  
4 fundraising activities for the Global Relief Foundation after he became aware of  
5 accusations that it had terrorist connections, Dr. Atalla answered all of Officer Wills’  
6 questions truthfully. After searching his financial records, Dr. Atalla corrected his  
7 incorrect answer the day after the interview.

8 **2. July 17, 2006**

9 On July 17, 2006, USCIS Officer Tina M. Richmond interviewed Dr. Atalla in  
10 Cincinnati, Ohio. The interview was not recorded. On November 5, 2009, Officer  
11 Richmond executed a declaration stating that she had interviewed Dr. Atalla on July 17,  
12 2006, at the USCIS office in Cincinnati, Ohio, and that the declaration is based on her  
13 personal knowledge and review of official documents maintained by the USCIS. The  
14 declaration states that the 2006 interview was necessary even though Dr. Atalla had been  
15 interviewed on May 27, 2004, because the “processing work sheets were not filled out.”

16 The declaration further states that Officer Richmond placed Dr. Atalla under oath  
17 for the July 17, 2006 interview and asked him “whether he had ever been a member of or  
18 associated with any organization, association, fund, foundation, party, club, society, or  
19 similar group in the United States”; “whether he had ever been a member of or in any way  
20 associated, either directly or indirectly with any terrorist organization”; “whether he had  
21 ever been arrested, cited, or detained, by any law enforcement officer, which would  
22 include immigration, customs or military officers, for any reason”; and “whether he had  
23 ever given false or misleading information to any U.S. government official, while  
24 applying for an immigration benefit or to prevent deportation, exclusion, or removal.”  
25 The declaration states that Officer Richmond knows she asked Dr. Atalla these questions  
26 because “it is [her] standard practice to ask these questions during every naturalization  
27 interview, and [she] recognize[d] [her] marks on [Dr.] Attala’s INS Form N-400  
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1 indicating that [she] did in fact ask [Dr.] Atalla the above questions.” The declaration  
2 does not state that it is Officer Richmond’s practice to read each question on the form  
3 exactly as it is written.

4 Officer Richmond’s declaration also states that there is no indication on the Form  
5 N-400 that Dr. Atalla disclosed that he was interviewed by customs officials on August  
6 23, 2004, July 5, 2005, or July 6, 2006, or by the FBI on July 12, 2004. Officer  
7 Richmond declares that if Dr. Atalla had disclosed these contacts with law enforcement  
8 officers, she would have questioned him about these encounters. But the declaration does  
9 not state that Officer Richmond asked Dr. Atalla whether he had ever been interviewed  
10 by any law enforcement officer.

11 When Officer Richmond interviewed Dr. Atalla in 2006, his file contained his May  
12 27, 2004, sworn statement regarding his involvement with the Global Relief Foundation  
13 and his May 28, 2004 letter regarding his donations to the Global Relief Foundation.  
14 Officer Richmond’s declaration does not state whether she questioned Dr. Atalla about  
15 his involvement with the Global Relief Foundation.

16 Because the 2006 interview was not recorded, it is impossible to determine the  
17 precise questions Officer Richmond asked Dr. Atalla or his responses. Officer Richmond  
18 does not actually remember her interview of Dr. Atalla and relies on her standard practice  
19 to make the assumption that she asked certain questions exactly as written on the Form  
20 N-400. However, the transcripts of the 2004 and 2008 interviews demonstrate that some  
21 USCIS interviewers do not read each and every question as it is written on the Form  
22 N-400.

### 23 3. June 12, 2008

24 On June 12, 2008, USCIS Officer Mario A. Jimenez interviewed Dr. Atalla in  
25 Phoenix, Arizona, regarding Dr. Atalla’s application for naturalization. The testimony  
26 was recorded by electronic sound recording and later transcribed. Officer Jimenez placed  
27 Dr. Atalla under oath at the beginning of the naturalization interview. He did not ask Dr.  
28



1 Atalla whether everything in his application was true and complete to the best of his  
2 knowledge. He did not ask Dr. Atalla on the record to orally certify that the answers  
3 contained in his application for naturalization were true and correct under penalty of  
4 perjury, but Dr. Atalla did sign and date the written certification portion of the  
5 application. At the conclusion of the interview, Officer Jimenez asked Dr. Atalla whether  
6 he had any questions or anything to add to the record, and Dr. Atalla said that he did not.

7 Officer Jimenez asked Dr. Atalla whether he had “ever been a member of or  
8 associated with any organization, association, fund, foundation, party, club, society, or  
9 similar group in the United States or in any other place.” After Dr. Atalla responded,  
10 “Yes,” Officer Jimenez read the names of the associations listed on Dr. Atalla’s  
11 application, which included both medical and Islamic organizations. Dr. Atalla added the  
12 Islamic Society of Greater Dayton and the Greater Dayton Islamic Foundation to the list.

13 Officer Jimenez then asked Dr. Atalla:

14 Q. Have you ever been a member of or in any way associated,  
15 either directly or indirectly, with the communist party?

16 A. No.

17 Q. Any other totalitarian party?

18 A. No.

19 Q. Any terrorist organization?

20 A. No.

21 Officer Jimenez also asked: “Have you ever been arrested, cited, in other words,  
22 received a citation, or detained by any law enforcement officer, including immigration,  
23 customs or military officers, for any reason?” Dr. Atalla responded, “Including traffic?”  
24 Dr. Atalla then responded to questions about his traffic violations. In 2005, he received a  
25 speeding ticket in Akron, Ohio. In late 2007, he received a ticket for driving too slow,  
26 unsuccessfully appealed it in court, and paid the ticket. In March 2008, Dr. Atalla

1 received a citation for red light violation based on a traffic camera, which was dismissed  
2 after Dr. Atalla attended traffic school.<sup>6</sup>

3 Officer Jimenez asked Dr. Atalla, "Have you ever given false or misleading  
4 information to any U.S. government official, while applying for an immigration benefit or  
5 to prevent deportation, exclusion, or removal?" Dr. Atalla responded, "No."

6 Officer Jimenez also reviewed with Dr. Atalla his 2004 sworn statement regarding  
7 his involvement with the Global Relief Foundation. With respect to specific questions  
8 presented in the 2004 statement, Officer Jimenez asked Dr. Atalla if responses stated in  
9 the 2004 statement were the responses he gave, and each time Dr. Atalla said it did. Then  
10 Officer Jimenez said he was going to ask additional follow-up questions that had not been  
11 asked previously. Officer Jimenez asked Dr. Atalla, "Have you sent any more money or  
12 donated funds to any other type of relief organizations?" Dr. Atalla responded  
13 affirmatively and identified Mercy International, Islamic African Relief, and Indian  
14 Education Student Fund.

15 In response to questions about the Global Relief Foundation, Dr. Atalla again  
16 explained that in 2000 he went to Baku, Azerbaijan, to help the Global Relief Foundation  
17 supervise the initiation of a medical clinic and to bring medical equipment and supplies  
18 for the clinic. Dr. Atalla again stated that he had communicated with Mohamad Chehade  
19 regarding the trip and subsequently had kept contact with him as a friend. Dr. Atalla  
20 stated that he had lost contact with Dr. Chehade a few years before the 2008 interview.  
21 When asked about his function with the Global Relief Foundation, Dr. Atalla said he was  
22 a volunteer:

23 Q. Going back to this GRF, what was your function within the  
24 organization? Just fundraiser?

25 <sup>6</sup>During Dr. Atalla's pretrial deposition, he explained that he was selected for  
26 additional airport screening on his return trips from Syria in 2004, 2005, and 2006, which  
27 he did not consider detention. USCIS did not offer any evidence at trial regarding this  
28 issue.

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A. Volunteer, just volunteer.

Q. Just volunteering?

A. Yeah. I mean, the fundraising that I did was particularly with the trip that I made, so I wanted –

Q. Okay. Was that the only fundraising you did, was for that trip?

A. That was the only – that’s the only fundraising that I did with them.

Next, Officer Jimenez questioned Dr. Atalla about whether he had attended any meetings at the Global Relief Foundation or a conference. Dr. Atalla responded that he had attended a conference in Chicago as a guest.

Officer Jimenez also asked Dr. Atalla questions regarding his fundraising activities and contributions to Global Relief Foundation’s legal defense fund. Officer Jimenez asked whether Dr. Atalla believed that the Global Relief Foundation had connections to terrorism:

Q. Do you believe that the GRF had any terrorist ties?

A. I don’t. I mean, otherwise I would have not.

Q. Okay. And now, do you believe the GRF had any terrorist ties?

A. I – I really don’t. I mean, I – how I (indiscernible), like, you know, whatever the investigation should reveal, reveals.

Q. Right.

A. You know, but I – knowing them, I – I don’t think – I mean, knowing that person, he’s not a person of –

Q. This Chehade?

A. Chehade. I mean, he’s a – he’s an MBA graduate. He writes books. He – he’s an upright person. That’s not his belief. So I really don’t.

Q. What kind of books does he write?

A. He – he wrote a book on time management.

1 When Officer Jimenez asked Dr. Atalla if he ever had considered himself to be a  
2 member of the Global Relief Foundation, Dr. Atalla said, "I was not a member." He also  
3 said that he was not "the official fundraiser" and that he did not ever attend any staff  
4 meetings.

5 Finally, Officer Jimenez asked Dr. Atalla what organizations had he donated to  
6 since he could no longer donate to the Global Relief Foundation. Dr. Atalla said, as far as  
7 relief organizations, he donated to the organizations he had identified earlier. He said he  
8 also donates to local Islamic centers in any city that he goes to and to charitable  
9 organizations, such as the cancer society and for handicapped children.

10 To the extent that Dr. Atalla's answer regarding whether he had ever been  
11 associated with any terrorist organization was incorrect because of his involvement with  
12 the Global Relief Foundation, any error was corrected by his responses to Officer  
13 Jimenez's further questioning. All of Dr. Atalla's other responses to Officer Jimenez's  
14 questions were truthful.

## 15 **II. Evidentiary Rulings**

### 16 **A. USCIS's Alternative Defense that Dr. Atalla Committed Crimes of** 17 **Moral Turpitude**

18 At the March 24, 2011 pretrial conference, Dr. Atalla's counsel objected to  
19 USCIS's intent to argue that Dr. Atalla be denied naturalization because he had  
20 committed crimes of moral turpitude, *i.e.*, making false statements on his naturalization  
21 application, perjury, and providing material support to a terrorist organization. USCIS  
22 first raised this argument on March 22, 2011, in its trial brief and proposed findings of  
23 fact and conclusions of law. USCIS's counsel contended that this alternative defense was  
24 based on the same facts as its primary defense, *i.e.*, that Dr. Atalla had given false  
25 testimony under oath with the subjective intent to obtain immigration benefits, and  
26 therefore did not require timely disclosure.  
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1           The Court concluded that the defense regarding crimes of moral turpitude could  
2 have been disclosed before the close of discovery and the untimely disclosure was  
3 unjustified and prejudicial to Dr. Atalla. New accusations of criminal activity, such as  
4 providing material support to a terrorist organization, would require additional discovery  
5 and cause further delay in naturalization proceedings that already span nearly nine years.  
6 The Court, therefore, excluded the untimely raised issue of whether Dr. Atalla had  
7 committed a crime of moral turpitude.

8           **B. Admission of FISA Intercepts, Exhibits 157-199**

9           Before and at trial, Dr. Atalla's counsel objected to the admission of numerous  
10 Foreign Intelligence Surveillance Act ("FISA") intercepts of telephone communications  
11 because they were disclosed after Dr. Atalla's deposition and some of the translations  
12 were not produced until after the close of discovery. On August 31, 2010, counsel for  
13 USCIS first discovered the existence of classified FISA intercepts of telephone  
14 communications made in 2000 and 2001 in which Dr. Atalla participated or that  
15 mentioned his name. Authority to use this classified information in this case was  
16 requested on October 26, 2010, and granted on November 1, 2010. Dr. Atalla was  
17 deposed on November 2, 2010. The intercepts were translated from Arabic to English,  
18 and verbatim translations were finalized on December 9, 2010, and produced to Dr. Atalla  
19 on December 10, 2010. On January 10, 2011, additional intercepts were found, and  
20 summaries of the additional intercepts were produced on February 8, 2011, before the  
21 discovery deadline, which had been extended to February 14, 2011. Verbatim  
22 translations of the second set of intercepts were produced on March 16, 2011.

23           When Dr. Atalla was deposed on November 2, 2010, he and his counsel were not  
24 aware of the FISA intercepts or that counsel for USCIS had received authority to use  
25 them and knew of the contents of the intercepts. During his deposition, Dr. Atalla was  
26 questioned about numerous items mentioned in the FISA intercepts. Subsequently, Dr.  
27 Atalla listened to the audio recordings of the FISA intercepts, compared them to the  
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1 translations, and did not disagree with the accuracy of the translations. Moreover, Dr.  
2 Atalla believed that the content of the FISA intercepts not only was unlikely to be  
3 prejudicial at trial, but actually corroborated his testimony.

4 Dr. Chehade also reviewed all of the FISA intercept audio files that USCIS  
5 intended to introduce as evidence in this case. He personally listened to all of the  
6 recordings and certified they were fair and accurate recordings of the conversations in  
7 question. He also confirmed the identities of the speakers in the recordings.

8 Therefore, at trial, the FISA intercepts were admitted, but subject to further  
9 consideration of any unfairness imposed by the timing of their disclosure and production  
10 to Dr. Atalla. Because the intercepts corroborate Dr. Atalla's testimony, the Court finds  
11 that the timing of their disclosure does not unduly prejudice Dr. Atalla and their  
12 admission does not impose any unfairness.

### 13 **III. Conclusions of Law**

#### 14 **A. Legal Standard**

15 "No alien has the slightest right to naturalization" unless he strictly complies with  
16 all statutory requirements. *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (quoting *United*  
17 *States v. Ginsberg*, 243 U.S. 472, 474-75 (1917)). To be eligible for naturalization, an  
18 applicant must establish certain residency requirements, physical presence in the United  
19 States for a requisite period, and a showing of good moral character. *See* 8 U.S.C.  
20 § 1427. The only contested issue here is Mr. Atalla's ability to demonstrate his good  
21 moral character for the relevant statutory period, which runs from the five years  
22 immediately preceding the filing of his naturalization application until the oath of  
23 allegiance is administered. *See* 8 C.F.R. § 316.10(a)(1); *United States v. Dang*, 488 F.3d  
24 1135, 1139 (9th Cir. 2007). The Court must "evaluate claims of good moral character on  
25 a case-by-case basis," considering certain statutory restrictions and "the standards of the  
26 average citizen in the community of residence." 8 C.F.R. § 316.10(a)(2). The Court must  
27 make a determination regarding the applicant's moral character during the statutory  
28

1 period, but it “may take into consideration, as a basis for its determination, the applicant’s  
2 conduct and acts at any time prior to [the statutory] period.” *Id.*

3 While Congress has not “specifically define[d] what ‘good moral character’ is,”  
4 *United States v. Jean-Baptiste*, 395 F.3d 1190, 1193 (11th Cir. 2005), it has established  
5 certain standards for determining when an applicant for naturalization cannot be found to  
6 have the requisite “good moral character.” *See* 8 U.S.C. § 1101(f). For example,  
7 Congress determined that any person who is a habitual drunkard, whose income is  
8 derived principally from illegal gambling activities, who has been convicted of an  
9 aggravated felony, or who has given false testimony for the purpose of obtaining any  
10 immigration benefit shall be found to lack good moral character and is accordingly  
11 ineligible for naturalization. *Id.* Here, the only dispute is whether Dr. Atalla has given  
12 false testimony for the purpose of obtaining any immigration benefit.

13 For an applicant’s false testimony to preclude a finding of good moral character  
14 under 8 U.S.C. § 1101(6), “the testimony must have been made orally and under oath, and  
15 the witness must have had a subjective intent to deceive for the purpose of obtaining  
16 immigration benefits.” *Ramos v. INS*, 246 F.3d 1264, 1266 (9th Cir. 2001). Statements  
17 made to an INS officer in a naturalization examination constitute testimony. *Id.*

18 The statute does not distinguish between material and immaterial false testimony.  
19 *Kungys v. United States*, 485 U.S. 759, 779 (1988). Lack of good moral character  
20 “appears to some degree whenever there is a subjective intent to deceive, no matter how  
21 immaterial the deception.” *Id.* at 780. “[U]nlike the misrepresentation clause of  
22 § 1451(a), the false testimony provisions of § 1101(f)(6) do not apply to ‘concealments.’”  
23 *Id.* at 781.

24 The applicant for naturalization must “bear the burden of establishing by a  
25 preponderance of the evidence that he or she meets all of the requirements for  
26 naturalization.” 8 C.F.R. § 316.2(b); *accord United States v. Hovsepian*, 359 F.3d 1144,

1 1168 (9th Cir. 2004). But the applicant also must prove good moral character “in every  
2 respect”:

3 When the Government seeks to strip a person of citizenship already  
4 acquired, or deport a resident alien and send him from our shores, it carries  
5 a heavy burden of proving its case by clear, unequivocal, and convincing  
6 evidence. But when an alien seeks to obtain the privileges and benefits of  
7 citizenship, the shoe is on the other foot. He is the moving party,  
8 affirmatively asking the Government to endow him with all the advantages  
9 of citizenship. Because that status, once granted, cannot lightly be taken  
10 away, the Government has a strong and legitimate interest in ensuring that  
11 only qualified persons are granted citizenship. For these reasons, it has  
12 been universally accepted that the burden is on the applicant to show his  
13 eligibility in every respect. This Court has often stated that doubts should  
14 be resolved in favor of the United States and against the claimant.

15 *Berenyi v. INS*, 385 U.S. 630, 636-37 (1967) (internal citations and quotation marks  
16 omitted).

17 The parties dispute whether Dr. Atalla must prove good moral character by “clear  
18 and convincing evidence” or by a “preponderance of the evidence.” Dr. Atalla has the  
19 better of the argument as a matter of controlling authority, but the distinction does not  
20 matter in this case. The Court is clearly convinced on the dispositive facts and inferences  
21 found herein. Dr. Atalla must prove that he did not give *any* false oral testimony under  
22 oath with the subjective intent to deceive for the purpose of obtaining immigration  
23 benefits:

24 The reason for denying naturalization whenever false testimony is  
25 given in an attempt to gain it goes beyond a judgment that one who gives  
26 false testimony to deceive the government is by that fact unworthy of the  
27 privileges of citizenship; it is also based on the practical ground that a false  
28 answer to a query which on its face appears innocuous may effectively cut  
off a line of inquiry which might have revealed further facts bearing on the  
petitioner’s eligibility for citizenship. Having asked a question which it  
deems significant to determine the qualifications of one seeking citizenship,  
the government is entitled to full disclosure.

29 *In re Haniatakis*, 376 F.2d 728, 730 (3d Cir. 1967). The high level of honesty required  
30 may entail a firm conviction of that honesty even within the “preponderance of the  
31 evidence” test. A thorough study of all the evidence leaves the Court with that  
32 conviction.



**B. Dr. Atalla Did Not Give False Oral Testimony Under Oath Nor with the Subjective Intent to Deceive for the Purpose of Obtaining Immigration Benefits.**

Although donating to an organization does not make one a “member of or associated with” the organization, Dr. Atalla’s involvement with the Global Relief Foundation included much more than donations. He raised funds for it, provided volunteer services under its auspices, and sought to perform an even more active role with Global Relief Foundation. The phrase “associated with” has diverse enough meanings in the abstract to encompass Dr. Atalla’s actions with respect to the Global Relief Foundation, and the phrase is not defined by federal statute or regulation. However, it is not necessary to determine whether Dr. Atalla is chargeable with every reasonable meaning, or even the most common meaning, of “associated with” in addition to his own reasonable meaning because Dr. Atalla did not give false oral testimony under oath. As found above, in each of the naturalization interviews that were recorded and transcribed, Dr. Atalla accurately answered the precise questions posed to him.

Further, even if Dr. Atalla should have said that he was “associated” with the Global Relief Foundation, his denial of any “association” was not made with the subjective intent to deceive for the purpose of obtaining immigration benefits. Beginning with his first naturalization interview, Dr. Atalla disclosed that he traveled to Baku, Azerbaijan, to assist the Global Relief Foundation in establishing a medical clinic there. He also disclosed that he donated money multiple times to the Global Relief Foundation and raised funds for the Global Relief Foundation’s medical relief programs. Even if he should have thought that his level of involvement with the Global Relief Foundation counted as being “associated” with it, his specific disclosures were far more important than this quarrel over what label to put on those disclosures. In light of those disclosures and the totality of evidence, failing to label those specifics as “association” was not done with intent to deceive. Further, Dr. Atalla provided the USCIS enough information about his involvement with the Global Relief Foundation that failure to label their relationship

1 as an “association” did not cut off any line of inquiry that might have revealed further  
2 facts bearing on his eligibility for citizenship.

3 In *Del Guercio v. Pupko*, the applicant orally denied under oath having been  
4 arrested or charged with violation of any law of the United States or state or any city  
5 ordinance although she had previously been charged with and convicted of two charges.  
6 160 F.2d 799, 799 (9th Cir. 1947). She later admitted that she had decided not to reveal  
7 the truth because she thought her application would be denied immediately if she were  
8 truthful, and she thought that if the INS did learn of the convictions, she would have a  
9 chance to explain the them. *Id.* at 799-800. Therefore, the Ninth Circuit reversed her  
10 admission to citizenship. *Id.* at 800. In contrast, Dr. Atalla disclosed his donations to and  
11 volunteering for the Global Relief Foundation during his first interview. He could not  
12 have reasonably thought he would avoid scrutiny of his involvement with the Global  
13 Relief Foundation by failing to label it as an organization with which he was  
14 “associated.”

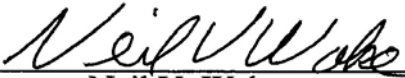
15 USCIS repeatedly argues that Dr. Atalla lied about being associated with Global  
16 Relief Foundation based on his rejection of the label “associated with,” but it disregards  
17 Dr. Atalla’s detailed answers in the same interview and in earlier interviews. This Court  
18 takes each of Dr. Atalla’s interviews as a whole, and each in light of his detailed answers  
19 in prior interviews given to USCIS over four years. USCIS’s attempt to find deception by  
20 ignoring the most important parts of what was said does not comport with the reality of  
21 oral communication or with common sense.

22 Further, to the extent USCIS contends that Dr. Atalla failed to disclose an  
23 “association with” the Holy Land Foundation, Benevolence International Foundation, or  
24 the Islamic African Relief Agency, Dr. Atalla’s involvement with these organizations was  
25 limited to making monetary donations to them before they were designated as having ties  
26 to terrorism. Dr. Atalla did not give false testimony by failing to define his involvement  
27 with these organizations as being “associated with” them.

1 The Court finds by clear and convincing evidence, though that standard is not  
2 required, that Dr. Atalla did not give false testimony or give false testimony with the  
3 subjective intent to obtain an immigration benefit. It further finds that he has proved his  
4 good moral character to the same standard.

5 IT IS THEREFORE ORDERED that Plaintiff's application for naturalization is  
6 granted. The Clerk shall enter judgment granting Plaintiff's application for  
7 naturalization. The Clerk shall terminate this case.

8 DATED this 20<sup>th</sup> day of June, 2011.

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Neil V. Wake  
United States District Judge  
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